

An Act

ENROLLED SENATE
BILL NO. 998

By: Green and Gollihare of the
Senate

and

Caldwell (Trey) of the
House

An Act relating to public utilities; amending 17 O.S. 2021, Section 286, which relates to cost of transmission upgrades; modifying application process for construction of certain facilities; establishing cost recovery provisions; updating statutory references; updating statutory language; referring deference of certain assets by a public utility; defining term; providing for Corporation Commission prudence review process; establishing rate proceeding procedures for certain utilities; providing exceptions; and providing for codification.

SUBJECT: Public utilities

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 17 O.S. 2021, Section 286, is amended to read as follows:

Section 286. A. 1. The portion of costs incurred by an electric utility, which is subject to rate regulation by the Corporation Commission, for transmission upgrades approved by a regional transmission organization to which the utility is a member and resulting from an order of a federal regulatory authority having legal jurisdiction over interstate regulation of transmission rates, shall be presumed recoverable by the utility. The presumption established in this paragraph may be rebutted by evidence that the costs so incurred by the utility for the transmission upgrades exceed the scope of the project authorized by the regional

transmission organization or order issued by the federal regulatory authority having jurisdiction over interstate regulation of transmission rates. The Commission shall transmit rules to implement the requirements of this subsection to the Legislature on or before April 1, 2006. The rules may authorize an electric utility to periodically adjust its rates to recover all or a portion of the costs so incurred by the utility for the transmission upgrades.

2. Reasonable costs incurred by an electric utility for transmission upgrades:

- a. needed to develop wind generation in this state,
- b. approved by the Southwest Power Pool, and
- c. placed into service before December 31, 2013,

shall be presumed recoverable through a periodic adjustment in the rates of the utility, provided that the presumption of the recovery of such costs or the recovery of such costs through a periodic adjustment in rates may be rebutted by evidence presented to the Commission. The determination of whether the costs shall be recovered and whether the costs shall be recovered through a periodic adjustment of rates shall be made by the Commission following proper notice and hearing in a cause to be filed by the electric utility in which it files such information as the Commission may require.

B. An electric utility subject to rate regulation by the Corporation Commission may file an application seeking Commission authorization of a plan by the utility to make capital expenditures for equipment or facilities necessary to comply with the federal Clean Air Act (CAA), the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), the Emergency Planning & and Community Right-to-Know Act of 1986 (EPCRA), the Endangered Species Act of 1973 (ESA), the National Environmental Policy Act of 1969 (NEPA), the Occupational Safety and Health Act of 1970 (OSHA), the Oil Pollution Act of 1990 (OPA), the Pollution Prevention Act of 1990 (PPA), the Resource Conservation and Recovery Act of 1976 (RCRA), the Safe Drinking Water Act (SDWA), the Toxic Substances Control Act (TSCA), all as

amended, and, as the Commission may deem appropriate, federal, state, local or tribal environmental requirements which apply to generation facilities. If approved by the Commission, after notice and hearing, the equipment or facilities specified in the approved utility plan are conclusively presumed used and useful. The utility may elect to periodically adjust its rates to recover the costs of the expenditures. The utility shall file a request for a review of its rates pursuant to Section 152 of this title no more than twenty-four (24) months after the utility begins recovering the costs through a periodic rate adjustment mechanism and no more than twenty-four (24) months after the utility begins recovering the costs through any subsequent periodic rate adjustment mechanism. Provided further, that a periodic rate adjustment or adjustments are not intended to prevent a utility from seeking cost recovery of capital expenditures as otherwise may be authorized by the Commission. However, the reasonableness of the costs to be recovered by the utility shall be subject to Commission review and approval. The Commission shall promulgate rules to implement the provisions of this subsection, such rules to be transmitted to the Legislature on or before April 1, 2007.

C. 1. An electric utility subject to rate regulation by the Corporation Commission may elect to file an application seeking approval by the Commission to construct a new electric generating facility, to purchase an existing electric generation facility or enter into a long-term contract for purchased power ~~and~~, capacity ~~and/or~~ and energy, subject to the provisions of this subsection. If, and to the extent that, the Commission determines there is a need for construction or purchase of the electric generating facility or long-term purchase power contract, the generating facility or contract shall be considered used and useful and its costs shall be subject to cost recovery rules promulgated by the Commission. The Commission shall enter an order on an application filed pursuant to this subsection within two hundred forty (240) days of the filing of the application, following notice and hearing and after consideration of reasonable alternatives, unless the electric generation facility utilizes natural gas as its primary fuel source. If the electric generation facility uses natural gas as its primary fuel source, then the Commission shall enter an order on an application filed pursuant to this subsection within one hundred eighty (180) days of the filing of the application,

following notice and hearing and after consideration of reasonable alternatives.

2. Bids received by the utility through a competitive bidding process within the twelve (12) months following the final bid due date of such competitive bidding process shall be considered substantial evidence to satisfy the consideration of reasonable alternatives.

3. Following receipt of an application filed pursuant to this subsection, the Corporation Commission staff may file a request to assess the specific costs, to be paid by the electric utility and which shall be deemed to be recoverable, for the costs associated with conducting the analysis or investigation of the application including, but not limited to, the cost of acquiring expert witnesses, consultants, and analytical services. The request shall be filed at and heard by the Corporation Commissioners in the docket opened by the electric utility pursuant to this subsection. After notice and hearing, the Commission shall decide the request.

~~3.~~ 4. Additionally, following receipt of an application filed pursuant to this subsection, the Office of the Attorney General may file a request with the Corporation Commission for the assessment of specific costs, to be paid by the electric utility and which shall be deemed to be recoverable, associated with the performance of the Attorney General's duties as provided by law. Those costs may include, but are not limited to, the cost of acquiring expert witnesses, consultants and analytical services. The request shall be filed at and heard by the Corporation Commissioners in the docket opened by the electric utility pursuant to this subsection. After notice and hearing, the Commission shall decide the request.

~~4.~~ 5. The Commission shall promulgate rules to implement the provisions of this subsection. The rules shall be transmitted to the Legislature on or before April 1, 2006. In promulgating rules to implement the provisions of this subsection, the Commission shall consider, among other things, rules which would:

- a. permit contemporaneous utility recovery from its customers, the amount necessary to cover the Corporation Commission staff and Attorney General assessments as authorized by this subsection,

- b. establish how the cost of facilities approved pursuant to this subsection shall be timely reviewed, approved, and recovered or disapproved, and
- c. establish the information which an electric utility ~~must~~ shall provide when filing an application pursuant to this subsection.

~~5.~~ 6. The Commission shall ~~also consider rules which may permit~~ an electric utility to begin to recover return on ~~or~~ and return of Construction-Work-In-Progress expenses prior to commercial operation of a newly constructed electric generation facility subject to the provisions of this subsection, provided the newly constructed electric generation facility utilizes natural gas as its primary fuel source. The Commission shall permit a separate rate adjustment mechanism, adjusted periodically, to recover the costs described in this section for new capacity in natural-gas-fired electric generation facilities. The new natural-gas-fired electric generation capacity eligible for those provisions shall also include new natural-gas-fired capacity additions at an existing electric generation facility. If a public utility implements a rate adjustment mechanism pursuant to this section and subsequently terminates the initiative to construct or acquire stake in a natural gas electric generation facility, the public utility shall automatically refund customers any amounts collected through such rate adjustment mechanism plus interest at the one-year United States Treasury Bill rate through the mechanism, over a period not to exceed ninety (90) days from the effective date of the termination of the initiative.

7. For any new natural-gas-fired electric generation facility constructed pursuant to this section, an electric utility shall secure a firm contract to transport natural gas to the generating facility. Such contract shall be secured pursuant to a competitive solicitation process conducted in accordance with applicable Commission rules. The cost incurred for the contract shall be presumed recoverable by the electric utility through its applicable fuel adjustment clause. Costs assessed upon the electric utility by the Commission for non-compliance with this section shall not be recoverable from the customers of the electric utility. If the electric utility does not receive a bid for firm transportation as a

result of its competitive solicitation, the electric utility shall be considered compliant with the requirements of this section provided that the Commission determines that the competitive solicitation is for a firm contract for transport of natural gas which could be reasonably provided by an available pipeline.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 286A of Title 17, unless there is created a duplication in numbering, reads as follows:

A. 1. On and after the effective date of this act, a public utility shall defer to a regulatory asset ninety percent (90%) of all depreciation expenses and return associated with all qualifying electric plants placed in service, provided the public utility has provided notice to the Corporation Commission of the public utility's election to make such deferrals pursuant to this section. Deferral under this section shall begin on the effective date of this act if the public utility notifies the Commission of the election prior to the effective date, or on the date that the utility notifies the Commission of the election if such date is after the effective date of this act.

2. For the purposes of this section, "qualifying electric plant" means all incremental electric plants placed in service by a public utility following the utility's last general rate case, excluding transmission facilities or new electric generating units.

B. The Commission shall conduct a prudence review of the associated qualifying electric plant resulting in the regulatory asset balances prior to moving such balances into the public utility's rate base. The regulatory asset balances arising under this section shall be adjusted to reflect any prudence disallowances of the associated qualifying electric plant, following notice and hearing, as ordered by the Commission.

C. Unless otherwise provided by this section, in each general rate proceeding concluded on or after July 1, 2025, the balance of the regulatory asset as of the end of the test year shall be included in the public utility's rate base without any offset, reduction, or adjustment based upon consideration of any other factor with the regulatory asset balances arising from deferrals

associated with the qualifying electric plant placed in service after the end of the test year.

D. Parts of regulatory asset balances created under this section that are not included in rate base shall accrue carrying costs at the public utility's weighted average cost of capital plus applicable federal, state, and local income or excise taxes. Regulatory asset balances arising under this section that are included in rate base shall be recovered in rates through a twenty-year amortization beginning on the date new rates reflecting such amortization take effect.

E. Depreciation expenses deferred under this section shall account for any qualifying electric plant placed into service. Return deferred under this section shall be determined using the weighted average cost of capital approved by the Commission in the public utility's last general rate case and applied to the change in regulatory asset balances caused by the qualifying electric plant, plus applicable federal, state, and local income or excise taxes. In determining the return deferred, the public utility shall account for changes in all plant-related accumulated deferred income taxes and changes in accumulated depreciation, excluding retirements.

F. This section shall only apply to any public utility that has elected to make the deferrals for which this section provides and filed a notice with the Commission of such election.

Passed the Senate the 27th day of March, 2025.

Presiding Officer of the Senate

Passed the House of Representatives the 6th day of May, 2025.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____